



Missouri Risk-Based Corrective Action - Closure of Sites with Contamination off the Source Property

Note: This technical bulletin replaces the Oct. 12, 2006, Missouri Risk-Based Corrective Action, or MRBCA, policy statement published by the Department of Natural Resources.

This fact sheet pertains to sites being evaluated under 10 CSR 25-18.010, Risk-Based Corrective Action Process, and associated MRBCA guidance at which contamination has or is likely to migrate in soil or groundwater from the property on which the contamination originated (the “source property”) onto one or more adjacent or nearby properties. 10 CSR 25-18.010 became effective Oct. 30, 2009. While the MRBCA rule and guidance may be applied to other than Brownfields/Voluntary Cleanup Program, or BVCP, sites, this fact sheet applies primarily to application of the rule and guidance to BVCP sites.

Rule Provisions and Requirements

- Section (1)(A)30 of the rule defines “site” as: “[The] areal extent of contamination inclusive of contamination both on the property at which the contamination originated and on all adjacent and nearby properties onto which such contamination has or is likely to migrate.”
- Section (4)(B) of the rule states, in part, “The extent of contamination and complete exposure pathways, not the property boundaries, determine the extent of site-specific data collection and analysis.”
- Section (9)(C)1 – 3 states, “Lateral and vertical impacts in soil and groundwater shall be delineated to the extent required to determine –
 1. Potential exposure pathways to human and ecological receptors under current and reasonably anticipated future conditions.
 2. The extent of impacts above the tiered risk-based levels for the identified exposure pathways.
 3. Exposure domains for each combination of receptor-pathway-route of exposure.”
- Section (9)(J) of the rule requires when contamination at concentrations above residential Risk-Based Target Levels, or RBTLs, has or is likely to migrate beyond one or more boundaries of the source property and onto one or more adjacent or nearby properties, the remediating party must gain access to all such properties in order to fully characterize the contamination and to assess associated risks.

In instances where contamination has migrated from the source property onto an adjacent or nearby property, and the risk assessment finds the contamination that migrated onto the adjacent property poses a level of risk that exceeds the acceptable risk level for residential (unrestricted) use, consistent with the requirements of 10 CSR 25-18.010, the remediating party has the following options:

- Reduce concentrations of chemicals of concern on the adjacent property to at or below residential use levels.
- Reduce concentrations of chemicals of concern on the adjacent property to at or below non-residential levels and record an Environmental Covenant in the chain of title of the adjacent property.

However, if the owner of the adjacent property refuses to place an Environmental Covenant in the property chain of title, the remediating party must reduce chemicals of concern on the adjacent property to at or below unrestricted use levels. This requirement will not apply when, in accordance with 10 CSR 25-18.010(18)(G), a local government has implemented an activity and use limitation that effectively renders the pathway in question incomplete.

Except as provided for at subsection (2)(D) of the rule, the MRBCA rule requires all parts of the site be subjected to characterization, risk assessment and risk management in order for the department to issue a Certification of Completion for the site. The subsection (2)(D) exception pertains to certain “brownfield” and other properties being evaluated under the oversight of the department’s BVCP. Provided certain conditions are met by the BVCP remediating party¹, the requirements of sections (8), (11), (14), (15) and (16) and subsections (4)(B), (9)(J), (18)(A) and (19)(A) of the rule may be applied to the property subject to voluntary remediation rather than the entire site.

The department recognizes at some sites, issues may arise that prevent a remediating party from being able to fully characterize and assess and manage risks on an adjacent property. For example, the owner of an adjacent property might refuse to grant the remediating party access to his or her property. If a specific regulatory authority compelling access does not exist, the remediating party may be unable to evaluate the property in full accordance with the requirements of the MRBCA process.

In situations where the owner of an adjacent property refuses to grant the remediating party access to their property, 10 CSR 25-18.010(9)(J)¹ specifies that the remediating party must:

1. Document all unsuccessful attempts to gain access, and obtain concurrence from the department the attempts to gain access were legitimate and reasonable and no further attempts need be made.
2. Provide written notice of the contamination to the owner of the adjacent property.
3. Meet all applicable target or risk levels at the boundary of the source property and take actions to ensure further migration of chemicals of concern at concentrations above applicable target levels does not occur in the future.

¹ The conditions are: 1) Foregoing investigation, assessment and remediation of the contamination that has migrated onto the adjacent or nearby property is necessary to promote the public benefit of remediating a “brownfield” or other voluntary cleanup site. 2) The BVCP participant is substantially in compliance with the U.S. Environmental Protection Agency’s All Appropriate Inquiries Rule at 40 CFR Part 312; and 3) Neither the BVCP participant nor the current owner or operator of the property, if different from the BVCP participant, caused or contributed to the contamination.

The departmental MRBCA guidance and related information is available online at www.dnr.mo.gov/env/hwp/mrbca/mrbca.htm.

10 CSR 25-18.010 is available online at www.sos.mo.gov/adrules/csr/current/10csr/10c25-18.pdf.

Please direct questions regarding this fact sheet to the Hazardous Waste Program, P.O. Box 176, Jefferson City, MO 65102-0176, or by calling 573-751-3176.

For More Information

Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102-0176
800-361-4827 or 573-751-3176
www.dnr.mo.gov/env/hwp